



NOTICE OF PROPOSED RULEMAKING

The Office of Administrative Hearings (OAH) proposes to adopt the regulation described below after considering all comments, objections, or recommendations regarding the proposed action.

Proposed Regulatory Action

OAH proposes to amend Title 1 of the California Code of Regulations, Division 2, Office of Administrative Hearings, Chapter 1, General APA Hearing Procedures. Specifically, OAH proposes to **amend** sections 1000, 1002, 1004, 1006, 1008, 1012, 1014, 1016, 1018, 1020, 1022, 1024, 1026, 1027, 1028, 1030, 1032, 1034, 1038, 1040, 1042, 1044, 1046, **add** sections 1015, 1019, 1048, and 1050; and **repeal** section 1036.

Public Hearing

At this time, OAH has not scheduled a public hearing. Any interested person or his or her duly authorized representative may request a hearing pursuant to Government Code section 11346.8 no later than 15 days prior to the close of the comment period.

Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to OAH. All written comments must be received no later than **October 20, 2003**.

Requests for a public hearing or written comments for OAH's consideration should be directed to the contact person indicated below.

Contact Person

Inquiries concerning the substance of the proposed action and requests for a copy of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, the final statement of reasons, when prepared, or other information upon which the rulemaking is based should be directed to:

Heather Cline Hoganson (backup: Janice Richardson)
Office of Administrative Hearings
560 J Street, Suite 300, Sacramento, CA 95814
(916) 322-2536 (backup: (916) 445-4926)

The text of the proposed regulation and the initial statement of reasons will be available at OAH's web site, at <http://www.oah.dgs.ca.gov>.

Availability of Statement of Reasons & Text of Proposed Regulations

The contact person will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the above address during regular business hours. As of the date this notice is published in the Notice Register, the

rulemaking file consists of this notice, the proposed text of the regulation, the initial statement of reasons, and any data considered. A copy may be obtained by contacting Ms. Hoganson at the address or telephone number listed above.

Availability of Changed or Modified Text & Final Statement of Reasons

Following the comment period, OAH may adopt the proposed regulation substantially as described in this notice. If modifications are made which substantially change the originally proposed text, the modified text with changes clearly indicated will be made available to the public for at least 15 days prior to the date on which OAH adopts the regulation. Requests for copies of any modified regulation should be sent to the attention of Ms. Hoganson at the address indicated above. OAH will accept written comments on the modified regulation for 15 days after the date on which it is made available.

If the proposed regulation is not significantly modified, OAH may adopt the proposed amendments to the regulation substantially as described below.

A final statement of reasons will be prepared before the proposed regulation is sent to the Office of Administrative Law. Requests for copies of the final statement of reasons should be sent to the attention of Ms. Hoganson at the address indicated above.

Informative Digest / Overview

The Administrative Procedure Act (Government Code 11340-11520) governs agencies with regard to rulemaking and adjudication. Formal Hearings are governed by Chapter 5, Government Code 11500-11529. In addition, many hearings are held under the general hearing provisions of Chapters 4 and 4.5, Government Code 11370-11470.50. The Office of Administrative Hearings (OAH) provides administrative adjudications for state agencies, and has developed rules of procedure for those hearings held under the Administrative Procedure Act.

A complete revision of these rules of procedure has been proposed. Most regulations have technical changes. A few new regulations have been proposed, including procedures for withdrawal as counsel, requesting security, discovery, making changes to a proposed decision, and remanding a decision.

Authority & Reference

The authority for the proposed regulations is found in the Administrative Procedure Act, Government Code 11370.5(b). This statute authorizes OAH to adopt rules and regulations to carry out the functions and duties of OAH under the Administrative Procedures Act. References include sections in the Code of Civil Procedure, the Government Code, the California Rules of Court, and case law which relates to adjudicative hearings.

DETERMINATIONS

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS: None

COST OR SAVINGS TO LOCAL AGENCIES OR SCHOOL DISTRICTS: None

EFFECT ON HOUSING COSTS: None

COST OR SAVINGS TO STATE AGENCIES: None

COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE: None

ASSESSMENT OF ECONOMIC IMPACT ON PRIVATE PERSONS OR BUSINESSES; SMALL BUSINESSES: Pursuant to Government Code 11346.5(a)(9), The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed action does not generate any new costs on private persons, businesses, or small businesses.

ASSESSMENT OF ECONOMIC IMPACT ON BUSINESSES AND JOBS: Pursuant to Government Code 11346.5(a)(7), (8), and 11346.3(a)(2), OAH has made an initial determination that the action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because (a) ordering the record (or transcript) is voluntary and (b) the amount of the record/transcript is not being changed, only who is managing the order. Pursuant to Government Code 11346.3(b)(1), OAH has determined that the proposed regulations will not affect the creation or elimination of jobs within the State of California; the creation of new businesses or the elimination of existing businesses within the State of California; or the expansion of businesses currently doing business within the State of California.

Consideration of Alternatives

The Office of Administrative Hearings must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected persons than the proposed action.

Initial Statement of Reasons

Section 1000. Purpose.

Introduction to regulations.

Technical changes. “Case” is being defined in the regulation revisions, so it is being capitalized throughout the regulations.

Section 1002. Definitions.

Defined terms used throughout these regulations are included in this section.

“Case” was added as a defined term for ease of reference throughout these regulations. This change was to differentiate between “hearings” and “cases.” One Case may have a number of dates set for prehearing conferences, settlement conferences, Motion hearings, or Hearings (on the merits of the Case).

The definitions of “OAH” and “Presiding Judge” were expanded, as their use in the regulations merited. By expanding the definition, repetitive language in other regulations was eliminated or shortened.

Other defined terms were re-lettered to retain an alphabetical order.

Section 1004. Construction of Regulations.

Usage notes for this chapter.

Subsection (a) was deleted as unnecessary, and all subsections re-lettered. Technical and other changes were made for clarity.

Section 1006. Format and Filing of Papers.

The proposed changes provide further guidance on filing papers with OAH. Paragraph (a) was re-written for clarity. In (b), parties will no longer be required to list the name of the assigned ALJ because these assignments frequently change. In (c), OAH proposes to adopt a common rule of court requiring papers to be two-hole punched at the top, which makes maintenance of files easier. The language is modeled after the court rules. Many attorneys already two-hole punch documents that they file with OAH. In (h), the change simply clarifies existing procedure. Other changes are technical or for clarity. Defined terms are capitalized.

Section 1008. Service; Proof of Service.

The changes clarify how to prove service of papers in OAH proceedings. Other changes are technical in nature.

Section 1012. Ex Parte Petitions and Applications for Temporary or Interim Orders.

Change clarifies that the *ex parte* process for interim orders includes petitions and applications. Most statutes providing for interim orders actually refer to the request as a petition. Occasionally, a party may make an *ex parte* request to the ALJ without notice to

other parties. To ensure due process, OAH has requirements for the minimum notice and general instructions on proceeding. Other changes are technical.

Section 1014. Pleadings; Notice of Defense; Withdrawal of Notice of Defense.

Documents submitted to OAH may need to be amended. This regulation provides guidance on amending or supplementing pleadings. It also provides a procedure in the event that a party decides to withdraw a request for hearing or notice of defense.

Subsection (c) was shortened, a portion of (c) was added as new subsection (d), and (d) was rewritten for greater clarity.

Section 1015. Notice of Representation and Withdrawal of Counsel or Other Representative.

This is a new regulation and was created in response to many attorneys asking what procedure to follow when withdrawing or substituting in as counsel in OAH proceedings. Unlike courts of record, OAH does not have to approve a counsel's request to withdraw; nor does OAH have a procedure or form for attorney substitutions. This regulation requires counsel and other representatives to notify OAH of withdrawal or substitution. Counsel and other representatives are now required to provide OAH with a name, address, telephone number, etc., so that OAH can contact and notify the correct person when necessary.

Paragraph (d) makes it clear that withdrawal of counsel or representative does not necessarily constitute good cause for a continuance of upcoming hearing dates.

Section 1016. Consolidated Proceedings; Separate Hearings.

When the same issue or factual scenario is present in more than one Case, it can be more efficient to consolidate Cases for one Hearing. Conversely, severing more than one Case into separate Hearings may save time. This regulation advises parties of the procedures to follow when requesting consolidation or severance. A new paragraph (c) was added to regarding stipulations to consolidate or sever. Also, a new paragraph (d) provides that the ALJ will prepare a separate proposed decision for each agency pleading that was consolidated for hearing. The regulation has also been rewritten for greater clarity.

Section 1018. Agency Request for Hearing; Required Documents

Agencies submit the requests to OAH to set Hearings. OAH has found that delays are caused when agency attorneys do not consult with respondents regarding available Hearing dates. In the past, OAH has calendared Cases based on dates that only the agency has provided. This results in the filing of many continuance requests from respondents who are not available on the Hearing dates the agency has requested. The changes encourage agency counsel to consult with respondents regarding the date they are unavailable for hearing. If the agency wishes to request preferred hearing dates, all parties must agree to the preferred dates and the agency must confirm in the request to set that all parties have agreed to the preferred dates. This change will decrease continuance requests and provide for a more expeditious process. The change is also designed to decrease costs and provide for greater calendaring efficiency. The changes to this regulation also require agencies to file all necessary documentation with OAH to allow for better Case preparation and decreased costs.

For the same reason, agencies are also now required to provide the names, addresses, and phone numbers of all parties who must be notified of the hearing.

Section 1019. Request for Security.

This is a new regulation that addresses the process for requesting security at hearings. Witnesses or a party or having a large number of people attending the hearing as spectators have presented some of the security concerns at hearings. The new regulation provides that the party or participant requesting security will direct the request to the Presiding Judge instead of the ALJ assigned to the Hearing. In this manner, the Hearing ALJ will not know the reasons for the request. By asking parties to advise the Presiding Judge in advance, OAH has adequate time to make arrangements for security at the Hearing with local law enforcement.

Section 1020. Motion for Continuance of Hearing.

A party may request to continue, or postpone, a Hearing date. This regulation has been rewritten for greater clarity. Added is a requirement that the moving party make reasonable efforts to contact other parties before filing the Motion and see if there is opposition to the Motion and to obtain unavailable and preferred hearing dates for re-scheduling the case. This reflects a current practice of many attorneys that has resulted in greater time and cost efficiencies for OAH and all parties.

Section 1022. Motions.

A party may file a Motion to request a change of Hearing location, to compel discovery, to quash a subpoena, to disqualify an ALJ for cause, to dismiss all or part of an accusation, to exclude witnesses, etc. The requirements of due process as well as the orderly conduct of proceedings necessitate procedures for filing these requests. Technical changes have been made to the regulation and it has been rewritten for greater clarity.

Section 1024. Subpoenas; Motion for a Protective Order.

Subpoenas may be used in formal proceedings to compel a witness' attendance or the production of documents. Many agencies use their own subpoenas; OAH has created a regular and a large-print subpoena/subpoena *duces tecum* based on the Judicial Council forms but which mirror the APA. Agencies or Respondents may request signed or unsigned OAH forms from any office, or may download unsigned forms from our web page at www.oah.dgs.ca.gov, under "Forms." On receipt of a subpoena, a party may apply to OAH for protection.

This regulation has been rewritten for greater clarity, and to refer to the Government Code section that addresses issuance of subpoenas.

Section 1026. Prehearing Conferences.

An ALJ may hold a prehearing conference before the Hearing date to review or discuss particular requests or Motions, to focus the issues of the Hearing, to make sure the parties are appropriately proceeding to Hearing.

The changes to this regulation are primarily technical and it has been rewritten for greater clarity. Timelines for filing mandatory prehearing conference statements have been changed from five calendar days to three business days before the prehearing conference, which gives parties more time to prepare.

Section 1027. Informal Hearings.

The Administrative Procedure Act provides for an informal hearing procedure in certain situations. Technical changes; rewritten for greater clarity. Much of the current regulation simply repeated the statute, so the repetitive parts of the current regulation were deleted.

Section 1028. Settlement Conferences; Settlements.

Most of the proposed changes are technical and the regulation has been rewritten for greater clarity. An agency representative with settlement authority must be available in person or by telephone during the settlement conference. The presiding judge or settlement judge has authority to excuse a party from attending the settlement conference. In addition, the procedures for notifying OAH of a settlement so that a case can be removed from the calendar have been clarified in paragraph (j).

Section 1030. Conduct of Hearing; Protective Orders.

A party may request that a Hearing be conducted by electronic means; be closed for confidentiality reasons; or be recorded by unofficial means. An ALJ must consider whether or not the physical limits of the Hearing room necessitate limiting the amount of people allowed; whether or not to exclude persons who threaten to disrupt the proceeding; whether or not any other action is required to conduct the Hearing in an orderly and efficient way. This regulation was rewritten to include the protective orders in current regulation 1036 and to more closely follow statutory provisions. Portions of both regulations 1030 and 1036 that simply repeated statutory language were deleted as unnecessary. Current regulation 1036 was combined with this one.

Section 1032. Interpreters and Accommodation.

This regulation explains how to request language interpreters and other accommodations for persons who appear at OAH either as parties or witnesses. The proposed changes are technical in nature and the regulation has been rewritten to delete redundant language and for greater clarity. Much of the current regulation was already covered by statute; those parts of the regulation are deleted as unnecessary.

Section 1034. Peremptory Challenge.

A party may make one objection to an assigned ALJ without cause. This regulation details the process. Objecting to an ALJ will not result in postponement of the Hearing automatically. Technical changes; rewritten for greater clarity. The prehearing ALJ is not always the Hearing ALJ, and the revisions so reflect. After much discussion, it was determined that a peremptory challenge should not be allowed on remand, since the remand is not a “new” matter. In addition, the peremptory challenge will not be permitted of Commission panel members in teacher dismissal for cause proceedings. The model Declaration was amended to reflect that the peremptory challenge is one without cause (the

current version might imply a “for cause” challenge). In addition, the time periods for filing a peremptory challenge have been simplified and shortened. Other changes are technical.

Section 1036. Conduct of Proceedings; Sealing the Record.

This section is being deleted – subsection (a) restates statutes and is unnecessary. The portion of the current regulation dealing with sealing records is now dealt with in section 1030.

Section 1038. Ordering the Record.

This regulation, on how to obtain an official transcript or copies of exhibits or audio tapes, was rewritten effective 7/1/03. Confusion has arisen regarding the ordering of transcripts versus the official record, and the regulation revision clarifies arrangements for copying of exhibits. The order of the paragraphs has also been revised for better continuity. Revised paragraph (a) contains language from current (a), (b), and (c). Revisions to (b) contain language from current (a) and (f); revised (c) contains language from current (c) and (f); revisions to (d) contain the language separating the exhibits from the transcript; (e) remains the same, with the addition the clarification provision; (f) has been revised to contain the language previously in (d).

Section 1040. Monetary Sanctions.

The Administrative Procedure Act provided that sanctions may be imposed for conduct under Code of Civil Procedure 128.5. Technical changes; rewritten for greater clarity. The provision allowing the judge to reconsider monetary sanctions on the grounds of financial hardship was deleted as unnecessary.

Section 1042. Cost Recovery.

Certain statutes (for example, Business and Professions Code section 125.3) allow an agency to recoup costs of investigation and prosecution. This regulation provides a procedure for requesting an award of costs. The regulation has been rewritten for greater clarity and changes are technical. The changes clarify that Declarations that include the information specified about costs in the regulation are one way that costs can be proven.

Section 1044. Request for Expenses After Default.

A respondent may fail to appear at a scheduled Hearing. The agency may request expenses incurred as a result of respondent’s failure to appear. The change clarifies that evidence by way of Declaration is only one way to prove expenses.
Technical changes.

Section 1046. Amicus Briefs.

Occasionally, a non-party may have an interest in a Case pending before OAH and may ask to submit an argument on behalf of one party or another. This regulation describes the process for requesting permission to file an *Amicus* brief and the criteria to be used in determining whether to permit the filing.
Technical changes; rewritten for greater clarity.

Section 1048. Technical and Minor Changes to Proposed and Final Decisions.

This would be a new regulation. When an ALJ makes a mistake or error in a proposed decision, agency employees often return the proposed decision to OAH and ask the ALJ to correct the mistake or error. Most of the time, the mistakes and errors are truly technical and consist of typographical or grammatical errors. Sometimes, the mistakes and errors are more substantive, but do not affect the ruling in the case. Oftentimes, agencies do not send notice to the parties when asking the ALJ to correct a mistake or clerical error in a proposed decision. It may be that the parties never learn of the request or correction.

Similar issues arise with mistakes or errors in cases where an ALJ issues a final decision, rather than a proposed decision.

There is a need to formalize and clarify the policy regarding correction of mistakes and errors in proposed and final decisions issued by OAH ALJ's. At present, there is no standardized process to address how agencies or ALJ's correct mistakes in these documents. The *ad hoc* approach that both agencies and ALJ's have used in the past gives rise to real concerns about compliance with legal and due process requirements. This includes a concern that an agency's request for correction without giving the parties notice and an opportunity to be heard may be construed as an impermissible *ex parte* communication pursuant to Government Code section 11430.10. The need for a standardized process has become more acute as the volume of proposed and final decisions have increased.

Proposed Decisions.

There are over 500 state and local agencies for which OAH conducts hearings. Many of these hearings result in the issuance of a proposed decision prepared by an ALJ pursuant to Government Code § 11517. Thirty days after the agency receives the proposed decision the agency must file a copy of the proposed decision as a public record and serve it on each party (Gov. C. § 11517(c)(1)). The agency may adopt the proposed decision or take other enumerated actions (Gov. Code § 11517(c)), resulting in a **final decision** of the agency, which the agency must file as a public record and serve on the parties (Gov. Code § 11517(d)).

The actions enumerated in Government Code § 11517(c)(2) that the agency may take with respect to a proposed decision include:

- “(C) Make technical or other minor changes in the proposed decision and adopt it as the decision. Action by the agency under the paragraph is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.

- (D) Reject the proposed decision and refer the case to the . . . [ALJ] to take additional evidence. If the case is referred to an . . . [ALJ] . . . he or shall prepare a revised proposed decision . . . based upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. . .
- (E) Reject the proposed decision, and decide the case upon the record, including the transcript . . .”

Generally, agencies do not rely on section 11517(c)(2)(D) or (E) in asking an ALJ to correct an error or mistake in a proposed decision. Section 11517(c)(2)(D) and (E) require the agency to order the transcript and such an expense can be prohibitive when compared to what usually amounts to a few minor mistakes or errors in the proposed decision. Those provisions also contemplate action by the Board or agency head to reject the proposed decision. Usually, it is agency staff who ask the ALJ to correct mistakes and errors in the proposed decision before it is even transmitted to the board or other agency head. So, it is concluded that agency staff are primarily relying on the authority of section 11517(c)(2)(C) when asking the ALJ to make corrections, as well as the inherent authority recognized in case law and discussed below.

Final Decisions in APA Formal Hearings Under Government Code §§ 11500, *et seq.*
The APA specifies in Government Code § 11518.5 that a party may make application, on notice to all, to correct a “mistake or clerical error” in a final decision of the agency within (15) days after service of a copy of the decision on a party, but not later than the effective date of the decision. The agency may refer the application to the ALJ who drafted the proposed decision (subdivision (b)), or the agency may deny the application, grant the application and modify the decision, or grant the application and set the matter for further proceedings (subdivision (c)). Subdivision (d) also allows the agency on its own motion, or on motion of the ALJ, to modify the decision to correct a mistake or clerical error. Section 11518.5 does not address corrections prior to issuance of the decision of the agency.

Government Code section 11518.5 and the Law Revision Commission comments establish that the right of the agency head to remedy mistakes in the decision is intended to be broad enough to cover corrections of factual or legal errors in a decision, and is intended to supplement the authority in Government Code section 11517.

Final Decisions in Hearings Not Subject to APA Formal Hearing Provisions.
There are any number of cases that recognize the inherent authority of a court to correct errors and mistakes in its own decisions. One such case is *Russ v. Smith* (1968) 264 Cal.App.2d 385. (While *Russ* was subject to the APA, it was instructive as to non-APA matters). In that case, *Russ* held two real estate licenses, both of

which were mentioned in the accusation. The hearing officer only mentioned one license in the proposed disciplinary order, which was adopted as the order of the commissioner. One week after the effective date of the order, the hearing officer issued a *nunc pro tunc* order stating there was a clerical error, and correcting the proposed decision to include both licenses, which was then adopted by the commissioner. In a writ petition, Russ claimed that the issuance and adoption of the *nunc pro tunc* order was in excess of jurisdiction and an abuse of discretion. The superior court's denial of the writ was affirmed on appeal. "Such *nunc pro tunc* corrections were mentioned in *Ginns v. Savage*, 61 Cal.2d 520, without any suggestion that they were impermissible." *Russ* at 391. [In *Ginns* (1964), the real estate commissioner issued a *nunc pro tunc* order that a 180-day suspension had been included due to "mistake and inadvertence," and should be deleted.]

The *Russ* court cited *Levinson v. Swan*, (1867), 33 Cal. 480, as an example of how a judgment may be corrected where the correct name of the judgment debtor appears in the record and the problem was the result of "clerical error," which can be made by the judge or a clerk. The correction was neither an abuse of discretion nor outside the commissioner's jurisdiction.

Significantly, *Russ* held that the power to correct clerical errors exists in courts of record as well as courts not of record. [Citing *Wildenhayne v. Justice's Court*, (1917) 34 Cal. App. 306]. "We are also of the opinion that such power pertains also to administrative tribunals exercising quasi-judicial functions (Citing *American Trucking*, below.)." *Russ* at 391. In *American Trucking Assns v. Frisco Co.* (1958) 358 U.S. 133, a hearing examiner for the Interstate Commerce Commission recommended approval of an application for certificates allowing the purchase of motor carrier operating rights, subject to certain conditions. The recommendation was adopted by the ICC, whose staff issued "compliance orders" requiring certain acts before the certificates would issue. The compliance orders did not contain the conditions listed by the hearing examiner. Subsequent proceedings found that the omission was due to inadvertent error by the staff. The ICC's order was sustained.

The *American Trucking* case also held that the correction of inadvertent ministerial errors was authorized. "In fact, the presence of authority in administrative officers and tribunals to correct errors has long been recognized—probably so well recognized that little discussion has ensued in the reported cases." [358 U.S. at 145, citing *Bell v. Hearne*, (1856) 60 U.S. 252]. The decision notes that the correction was in a proceeding for which notice was given.

Limitations on Ability to Correct Mistakes and Errors.

The types of errors that can be corrected include corrected amounts, computation errors, mistakes in term or phrase, mistaken description of property, omission of names of parties or date of entry of judgment, mistake in parties' names or capacities, and signing the wrong order. Clerical errors in the abstract of judgment may also be corrected. *People v. Mitchell*, (2001) 109 Cal. Rptr. 2d. 303. An inadvertent failure

to include an attorneys' fees award could be corrected by the arbitrator hearing the dispute. *Century City Medical Plaza v. Sperling, Isaacs & Eisenberg* (2001) 103 Cal. Rptr. 2d 605. Further, evident miscalculations of figures, or evident mistake in a description may also be corrected. [Citing *Elliot v. City of Long Beach*, (1997) 57 Cal.App.4th 495]. Moreover, even omitted issues in arbitration awards may be corrected prior to judicial confirmation. [Citing *AM Classic Construction v. Tri-Build Development* (1999) 70 Cal.App.4th].

The Law Revision Commission comments accompanying section 11518.5, when read together with the authority in section 11517(c)(2)(C), provide some insight into the breadth of correction authority that the drafters of the APA envisioned for both proposed and final decisions.

“ . . . Instances where this procedure is intended to apply include correction of factual and legal errors in the decision. This supplements the authority in 11517 of the agency head to adopt a proposed decision with technical or other minor changes.”

The authority to correct does not extend to reconsideration of a proposed or final decision. In California, an administrative agency does not have authority to reconsider a decision absent a specific statutory grant to the contrary. See *Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407. In addition, as stated above, section 11517(c)(2)(C), indicates that no correction to a proposed decision may “change the factual or legal basis” thereof.

Summary of Proposed Regulation 1048:¹

Paragraph (a) of the proposed regulation addresses applications to OAH to correct “a mistake or clerical error, or make minor or technical changes” in a proposed decision. Notice and an opportunity to be heard is provided for all parties as the request is deemed to be an *ex parte* communication pursuant to Government Code section 11430.10 (which does not fall within one of the exceptions in Government Code section 11430.20). This means that the curative protections for *ex parte* communications that provide for notice and an opportunity to be heard apply pursuant to Government Code section 11430.50.

Paragraph (b) provides the ALJ with the ability to make corrections on his or her own motion. The paragraph grants discretion to the ALJ, depending on the nature of the proposed corrections, to give all parties notice and an opportunity to be heard before making the corrections.

Paragraph (c) informs agencies of their authority to make changes to proposed decisions pursuant to Government Code section 11517(c)(2)(C). Paragraph (d)

¹ At present, the proposed regulation has paragraph headings that will be eliminated when the regulation is sent to the Office of Administrative Law.

informs agencies of the ability to make changes pursuant to the parties' agreement. Similarly, paragraph (e) addresses the ability of the ALJ to correct a proposed decision pursuant to stipulation.

Paragraph (f) clarifies that no change or correction to a proposed decision may be made if the final decision in the case has already been adopted. This addresses the situation in which the agency head, unbeknownst to OAH or the parties in the case, has already adopted a final decision in the case.

Paragraphs (g) and (h) address requests to correct final decisions issued both in hearings subject to the formal hearing provisions of the APA and those that are not. Paragraph (i) provides that the corrections process cannot be used to reconsider a proposed or final decision or change the "factual or legal basis" for the decision, as provided in Government Code section 11517(c)(2)(C).

Paragraph (j) provides that the documents related to a request for correction shall become a part of the record. This is required of *ex parte* communications pursuant to Government Code section 11430.50.

Section 1050. Remand or Reconsideration.

This is a new regulation created to provide a process for agencies to follow when a case is remanded to OAH or referred to OAH for reconsideration.